THAM MENG FATT

v.

UTAM SINGH OMNIBUS CO. LTD.

HIGH COURT MALAYA, SEREMBAN
AJAIB SINGH J
[CIVIL SUIT NO. 42 OF 1974]
23 MARCH 1982

CIVIL PROCEDURE: *Amendment - Addition of a new party - Personal injuries infant - Injured while lawfully boarding motorbus - Died 9 years later - Title to writ amended to include father as administrator - Application made to include new terms for special damages - Whether amendment caught by Limitation Act 1953 - Writ filed within the time limit.*

The plaintiff an infant, 7 years old, who was injured on 22 September 1970 while lawfully boarding a motor bus sued the defendants thorough his father and next friend for damages. He alleged negligence and carelessness on the part of the defendants' agents or servants in putting the motor bus into motion which caused the plaintiff to fall and suffer serious injuries.

Some 9 years later the plaintiff died from the injuries he had received - from complications arising out of the injuries. The title to the writ was consequently amended to include the father as the administrator of the deceased infant's estate. The statement of claim was also amended pursuant to an application by the plaintiff's counsel to include several new items namely nursing care, nourishing food, damage to books and clothes and transport expenses for special damages. The defendants' counsel raised objections to the amendments as the same were caught by the Limitation Act 1953.

Held:
The writ had been filed within the time limit and the amendments were merely the items in respect of special damages which the plaintiff had incurred and would not be caught under the Limitation Act although these items were added after the limitation period.

[Judgment for the plaintiff.]

For the plaintiff - S. Kanagasabapathi
For the defendant - N.A. Marjoribanks

JUDGMENT

Ajaib Singh J:

The plaintiff infant sued the defendants through his father and next friend for damages arising out of a motor accident. The infant was about 7 years old at the time of the accident and some 9 years later he died from the injuries he had received - from complications arising out of the injuries. The writ was consequently amended with the father stepping in as the administrator of the estate of the deceased infant. The statement of claim was also amended accordingly. This amendment was made pursuant to an application by plaintiff's Counsel and in doing so the plaintiff added several items for special damages which were not in the original statement of claim. I allowed the amendments over the objections raised by the learned counsel for the defendants. I shall revert to this later in my judgment.

The plaintiff's claim was that on 22 September 1970 the infant was lawfully boarding a motor bus when the defendants' agents or servants negligently and carelessly put the said motor but into motion causing the plaintiff thereby to fall off the bus and suffering serious injuries.

The defendants denied the allegation of negligence on their part or of their servants and agents and averred that the injuries were caused to the plaintiff when he was pushed by other school children to the ground. At the end of the hearing I found for the plaintiff and held that the defendants were wholly to be blamed for the accident.

The infant (PW3) gave evidence on 21 June 1979 when he was about 16 years old - the accident having taken place on 22 September 1970 when the infant was about 7 years old. His evidence was supported by another school boy Lee Jan Pin (PW5). I accepted the evidence of these two boys that the defendants' bus had come along to where the school children were waiting and the boys were in the process of boarding the bus after some passengers had disembarked. The infant (PW3) had one foot on the bus steps when the bus suddenly moved forward causing him to fall and hit the ground on his hip area. PW5 was two boys behind PW3 and saw what had happened. The bus then stopped after going forward a short distance and the driver came out after which the infant was taken to the hospital.

Balakrishnan (DW2) the bus driver said that he was not in the bus at all when the incident took place. His bus was stationary and the engine was not running and he himself was seated in another bus nearby talking to his friends. Later at about 6.15 p.m. they heard a commotion and he came out and saw this boy injured. Another witness Puran Singh (DW1) who was also a bus driver gave similar evidence in support of DW2.

Although the infant (PW3) and his witness (PW5) were young boys aged between 16 and 18 were relating events which took place some 9 years earlier I was very must impressed by the manner in which they gave evidence and from their demeanour I was satisfied that they were speaking the truth. On the other hand the bus driver and Puran Singh appeared guarded in the manner they were giving their answers and in some instances the evidence was remarkably the same. These two people were bus drivers and they would have the court believe that they were seated away in another bus at the time when it was time for school children to be going home in their respective buses. Also by the nature of the injuries it is more probable that the boy fell off a running bus and received severe injuries to his hip area and spine which would have been somewhat unlikely if he had merely been pushed to the ground by the other school boys.

In the event therefore I held that the plaintiff had proved his case that the defendants were wholly liable for the accidents and the consequent injuries which the plaintiff received.

Now to revert to the application for the amendment of the statement of claim. Mr. Marjoribanks for the defendants submitted that items (c), (d), (e), (f) and (g) in the proposed amendments to the particulars of special damages were caught by the Limitation Act 1953. These items referred to nursing care, nourishing food, damage to books and clothes and transport expenses. However I overruled the objection. The writ had been filed within the time limit and the amendments were merely the items in respect of special damages which the plaintiff had incurred and would not in my view be caught under the Limitation Act although these items were added after the limitation period.

The infant had suffered serious injuries and had been in and out of hospital till he died in December 1979. For the injuries, pain and suffering and loss of amenities till the date of the deceased's death I awarded a sum of RM65,000 with 6 per cent interest from date of service of writ. As for special damages I awarded a sum of RM2,000 for cost of nursing, RM750 for nourishing food, RM15 for clothes, RM35 for bag and books and RM1,500 for transport expenses. Funeral expenses and the cost of extracting the letters of administration were agreed

at RM1,250 and RM350 respectively. I awarded interest at 4 percent on special damages from the date of the accident. There was a claim also for future earnings representing the "lost years" but I made no award on this item as I found insufficient evidence to do so.

Also found at [1982] CLJ 263